

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Offic**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/950,902 10/15/97 HAGIWARA

Y S-2418

IM52/0209

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EXAMINER

SHERBER, C

ART UNIT

PAPER NUMBER

16

1761

DATE MAILED:

02/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/950,902	Applicant(s) Hagiwara
	Examiner Curtis E. Sherrer	Group Art Unit 1761

Responsive to communication(s) filed on Dec 7, 2000

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- Claim(s) 1-4 and 9-15 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1-4 and 9-15 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claims _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Part III DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Papazian (The New Complete Joy of Home Brewing, pp. 95-99) for the reasons set forth in the last Office Action.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 8-10 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papazian in view of Rizzi et al (U.S. Pat. No. 5,008,125) for the reasons set forth in the last Office Action.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Papazian in view of Rizzi et al and in further view of Suzuki (U.S. Pat. No. 3,845,220) for the reasons set forth in the last Office Action.

Response to Arguments

6. Applicant's arguments filed 12/07/00 have been fully considered but they are not persuasive.

7. Applicant argues that the prior is directed to beers rather than wine. The distinction between wine and beer is not so clear as to distinguish the prior art from the instant claims. This was argued in Applicant's last response and the Examiner's position is maintained. The fact that many (or most) beers are produced with only malted barley, hops, yeast and water does not overcome the fact that many beers are produced with fruit juices, wine yeasts, sugar extracts, etc. Further, many wines have been produced with barley, as mentioned in the last Office Action.

8. It is also noted that it is well known that hops were not incorporated into British beers until the 15th and 16th centuries. This clearly indicates that "beer" is not necessarily defined by an alcoholic drink that is necessarily hopped. The term is as broad as the producer who makes a fermented beverage wants it to be.

9. While Applicant relies on common definitions to provide strict boundaries on the scope of the terms "wine" and "beer," these are not found convincing. They provide general guidance

as to what these terms imply, but they do not fully define the scope of the terms. For example, raspberry wheat beer or Japanese rice beer; they may contain very little or no malt. Also, apple wine contains no grape juice, but is still a wine. Applicant's use of the term "wine drink" provides little in the way of a limitation. It may generally indicate a high alcohol beverage (at most). It is this limitation that requires the use of wine yeast, as ale or lager yeast generally cannot ferment to such a high degree as wine yeast. The prior art teaches high alcohol beverages with the use of wine yeast and thereby they make a wine drink.

10. Applicant newly asserts that "the extraction residue is substantially free of coffee flavor." It is unclear on what basis Applicant makes this assertion. Further, it is unclear what is the scope of "substantially free." This would include some coffee flavor. This indicates what the Examiner previously asserted, that depending on how much (which is not claimed) is used, the final product could be the same as using regular coffee. Applicant has not shown, as is his burden, that any differences would be found for any and all amounts of added ingredients.

11. Therefore, again, the broad product claim is considered anticipated because it will contain the same chemicals as found and extracted by Applicant's process. Applicant's attention is again directed to the holding in *In re Best*. Again, it is noted that the data found in the instant specification shows that the instant beverages have coffee color aroma and taste, as would a beverage made by the prior art method.

Conclusion

12. No claim is allowed.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The **fax phone number** for this Group is (703)-305-3602.

15. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer
Primary Examiner
February 6, 2001